

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters
(Also, Part I, sec. 401, 403; 1.401(b)-1.)

Rev. Proc. 2000-27

SECTION 1. PURPOSE

.01 This revenue procedure opens the Internal Revenue Service's determination letter program to allow sponsors of qualified plans to obtain determination letters that take into account all the changes in the qualification requirements made by "GUST", including those changes made by the Small Business Job Protection Act of 1996, Pub. L. 104-188 ("SBJPA"), that are first effective in plan years beginning after December 31, 1998. This procedure also extends until the last day of the first plan year beginning on or after January 1, 2001, the remedial amendment period under sec. 401(b) of the Code for amending plans for GUST, as well as the TRY '86 remedial amendment period for governmental and nonelecting church plans. Finally, this revenue procedure extends by an additional year the period of extended reliance for certain plans that received favorable determination, opinion, or notification letters under TRA '86.

.02 The term "GUST" refers to the following:

1 the Uruguay Round Agreements Act, Pub. L. 103-465 ("GATT");

2 the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353 ("USERRA");

3 SBJPA;

4 the Taxpayer Relief Act of 1997, Pub. L. 105-34 ("TRA '97"); and

5 the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206 ("RRA '98").

SECTION 2. BACKGROUND

.01 Prior to June 26, 2000, plan sponsors could not request determination letters under sec. 401(a) or sec. 403(a) that take into account the changes in the qualification requirements made by SBJPA that are first effective in plan years beginning after December 31, 1998, unless the determination related to a terminating plan. Instead, sponsors of individually-designed plans, including volume submitter plans, could request letters that take into account all the changes in the qualification requirements made by GUST other than those changes made by SBJPA that are first effective in plan years beginning after December 31, 1998. (These letters are referred to in

this revenue procedure as “GUST I letters.”) Alternatively, sponsors of individually-designed plans, including volume submitter plans, had the option to request determination letters that do not take into account any of the changes made by GUST, except for changes to sec. 401(a)(26) and sec. 414(n). (These letters are referred to as “pre-GATT letters.”) Determination letters for master or prototype (M&P) or regional prototype plans that have not yet been amended by their sponsors for GUST do not consider the changes made by GUST. *See* Rev. Proc. 98-14, 1998-1 C.B. 371, as modified by Rev. Proc. 98-53, 1998-2 C.B. 456, and section 3.03 of Rev. Proc. 2000-6, 2000-1 I.R.B. 187.

.02 Proposed regulations under sec. 411(d)(6), which were published in the **Federal Register** on March 29, 2000 (65 Fed. Reg. 16546), would permit qualified defined contribution plans to be amended to eliminate some alternative forms in which an account balance can be paid under certain circumstances, and would permit certain transfers between defined contribution plans that are not permitted under regulations now in effect. The proposed regulations are proposed to be effective upon publication of final regulations in the **Federal Register** and cannot be relied upon before finalization.

.03 Under sec. 401(b), plan sponsors have a remedial amendment period in which to adopt GUST plan amendments. Rev. Proc. 99-23, 1999-16 I.R.B. 5, provides that the GUST remedial amendment period for nongovernmental plans ends on the last day of the first plan year beginning on or after January 1, 2000. For governmental plans, as defined in sec. 414(d), the GUST remedial amendment period ends on the later of (i) the last day of the last plan year beginning before January 1, 2001, or (ii) the last day of the first plan year beginning on or after the “1999 legislative date” (that is, the 90th day after the opening of the first legislative session beginning after December 31, 1998, of the governing body with authority to amend the plan, if that body does not meet continuously). The remedial amendment period can be further extended by the timely submission of a determination letter application. The end of the GUST remedial amendment period is the deadline for making all GUST plan amendments, including plan amendments reflecting the repeal of sec. 415(e) and other plan amendments specifically enumerated in Rev. Proc. 99-23. The GUST remedial amendment period also applies with respect to all disqualifying provisions of new plans adopted or effective after December 7, 1994, and with respect to all plan amendments adopted after December 7, 1994, which would cause an existing plan to fail to be qualified.

.04 Rev. Proc. 2000-20, 2000-6 I.R.B. 553, includes a procedure for extending the GUST remedial amendment period for employers adopting M&P or volume submitter plans. To be eligible for the extension, employers must either adopt an M&P or volume submitter plan before the end of the GUST remedial amendment period (determined without regard to the extension) or, before such time, certify their intent to adopt a GUST-approved M&P or volume submitter plan. Additionally, the M&P sponsor or volume submitter practitioner must request a GUST opinion or advisory letter by December 31, 2000.

.05 Rev. Proc. 99-23 extended the TRA ‘86 remedial amendment period for governmental plans to the end of the GUST remedial amendment period for governmental plans described above. The plan amendments to which the TRA ‘86 remedial amendment period applies are those

required to comply with the Tax Reform Act of 1986, Pub. L. 99-514 ("TRA '86") and subsequent legislation through the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66 ("OBRA '93").

.06 Under Notice 98-39, 1998-2 C.B. 205, nonelecting church plans are not required to be amended to comply with regulations under sec. 401(a)(4), 401(a)(5), 401(l), and 414(s) until the last day of the first plan year beginning on or after January 1, 2001. However, under Rev. Proc. 99-23, these plans are required to be amended to comply with other applicable provisions of TRA '86 and subsequent legislation through OBRA '93 by the end of the generally applicable GUST remedial amendment period, that is, the end of the first plan year beginning on or after January 1, 2000.

.07 Plans that were submitted to the Service within certain deadlines for determination, opinion, or notification letters under TRA '86 and received favorable letters were entitled to extended reliance on their letters. However, plans with extended reliance are required to be amended to comply with regulations and administrative guidance of general applicability issued since the date of the plan's favorable TRA '86 letter. Rev. Proc. 99-23 extended the time for adopting such amendments to the end of the GUST remedial amendment period.

SECTION 3. PROGRAM OPENING

.01 Applications for determination letters under sec. 401(a) or sec. 403(a) that are filed with the Service on or after June 26, 2000, for individually-designed plans, including volume submitter plans, will be reviewed taking into account all the changes in the qualification requirements made by GUST, including those changes made by SBJPA that are first effective in plan years beginning after December 31, 1998, unless the sponsor asks the Service to limit the extent to which the plan is reviewed for GUST, as described below. (Determination letters that take into account all the GUST changes are referred to in this revenue procedure as "GUST II letters.") Except in the case of terminating plans, the review of applications for determination letters for M&P plans will take into account the GUST changes only to the extent that the M&P plan sponsor has amended the plan for GUST and received a favorable opinion letter.

.02 Until further notice, sponsors of individually-designed plans, including volume submitter plans, will continue to have the option of limiting the extent to which their plans are reviewed for GUST by requesting either a GUST I letter or a pre-GATT letter, rather than a GUST II letter. The sponsor should make this request in a cover letter with the application. (This option does not apply to applications for determination on plan termination.) Under this option, the sponsor will need to submit another application and pay another user fee to obtain a GUST II letter.

.03 Because the proposed regulations under sec. 411(d)(6) may not be relied upon prior to finalization, the proposed regulations will not be taken into account by the Service for purposes of issuing determination letters. Until such regulations are finalized, the Service will not issue a favorable determination letter for a plan that is amended to eliminate or reduce benefits in a manner that is not permitted under regulations now in effect. Therefore, sponsors who are

considering submitting determination letter applications before the proposed regulations under sec. 411(d)(6) are finalized should also be aware that they may have to submit another application and pay another user fee if they wish to adopt plan amendments as a result of the final regulations.

.04 In general, plans must be restated when they are submitted for GUST II determination letters. For this purpose, submission of a working copy of the plan in a restated format will suffice. A plan is generally exempt from the requirement to restate, however, if there have been fewer than four consecutive amendments since the plan was last restated, excluding amendments making only nonsubstantive plan changes, the plan has a favorable TRA '86 determination letter, and the plan meets either of the following conditions:

The plan is a defined contribution plan under which the only contributions are nonelective employer contributions; or

The plan has a favorable GUST I determination letter and is not adding provisions designed to satisfy the safe harbor requirements of sec. 401(k)(12) or sec. 401(m)(11).

The Service nevertheless reserves the right to require restatement of a plan or submission of a working copy of a plan in a restated format in any case in which this is determined to be necessary.

.05 In general, Form 6406, *Short Form Application for Determination for Minor Amendment of Employee Benefit Plan*, may not be used to apply for either a GUST I or a GUST II letter. However, if use of Form 6406 is not otherwise precluded by section 11 of Rev. Proc. 2000-6, Form 6406 may be used to apply for a GUST II letter for a defined contribution plan with a favorable GUST I letter which does not include provisions designed to satisfy the safe harbor requirements of sec. 401(k)(12) or sec. 401(m)(11). In this case, the application should include a cover letter indicating the application is for a GUST II letter. The Service reserves the right to require the filing of a Form 5300 series application in any case in which it determines that the use of Form 6406 is inappropriate.

.06 The Service will attempt to contact each plan sponsor who has a Form 5300 determination letter application being reviewed by a determination letter specialist on June 26, 2000, to determine if the sponsor wishes to convert the application to a GUST II application. The Service will continue to process each other pending application in accordance with the procedures in effect prior to June 26, 2000.

SECTION 4. EXTENSION OF THE REMEDIAL AMENDMENT PERIOD

.01 The GUST remedial amendment period for nongovernmental plans is extended to the last day of the first plan year beginning on or after January 1, 2001. The remedial amendment period for governmental plans, as defined in sec. 414(d), is extended to the later of (i) the last day of the first plan year beginning on or after January 1, 2001, or (ii) the last day of the first plan year beginning on or after the "2000 legislative date" (that is, the 90th day after the opening of the first

legislative session beginning after December 31, 1999, of the governing body with authority to amend the plan, if that body does not meet continuously).

.02 In general, all plan provisions that either cause a plan to fail to satisfy the qualification requirements of the Code because of changes to those requirements made by GUST or are integral to a qualification requirement changed by GUST are disqualifying provisions under sec. 1.401(b)-1(b) of the regulations. Thus, this extension of the GUST remedial amendment period applies to all GUST plan amendments, including all those specifically enumerated in Rev. Proc. 99-23. In addition, this extends the remedial amendment period with respect to all disqualifying provisions of new plans adopted or effective after December 7, 1994, and with respect to all plan amendments adopted after December 7, 1994, which would cause an existing plan to fail to be qualified.

.03 This extension also applies for purposes of the time by which employers must either adopt an M&P or volume submitter plan or certify their intent to adopt a GUST-approved M&P or volume submitter plan in order to be eligible for the extension described in section 19 of Rev. Proc. 2000-20. However, the December 31, 2000, deadline for submission of applications for opinion and advisory letters under section 19 of Rev. Proc. 2000-20 is not extended.

.03 The TRA '86 remedial amendment period for governmental plans is extended to the end of the GUST remedial amendment period for governmental plans described above. The TRA '86 remedial amendment period for nonelecting church plans is extended to the end of the GUST remedial amendment period for nongovernmental plans described above. Thus, nonelecting church plans now have a single amendment deadline for all GUST and TRA '86 plan amendments, including amendments relating to the nondiscrimination requirements. The additional administrative relief provided under Notice 92-36, 1992-2 C.B. 364, continues to be available to governmental and nonelecting church plans through the end of their respective remedial amendment periods with respect to the applicable nondiscrimination requirements.

SECTION 5. EXTENSION OF EXTENDED RELIANCE PERIOD

The TRA '86 extended reliance period is extended by an additional year. A plan with extended reliance must be amended by the end of the GUST remedial amendment period to the extent necessary to comply with regulations or administrative guidance of general applicability issued since the date of the plan's favorable TRA '86 determination letter. These amendments must be made effective no later than the first day of the plan year in which the GUST remedial amendment period ends, and, except in the case of M&P or volume submitter plans, no earlier than the first day of the plan year in which the amendments are adopted. (But see Rev. Rul. 94-76, 1994-2 C.B. 46, and Rev. Rul. 96-47, 1996-2 C.B. 35.)

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Procs. 98-14, 99-23, 2000-6, and 2000-20 are modified.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective June 26, 2000.

DRAFTING INFORMATION

The principal author of this revenue procedure is James Flannery of the Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, contact the Employee Plans Division's telephone assistance service between the hours of 1:30 and 3:30 p.m. Eastern time, Monday through Thursday, on (202) 622-6074/75. (These telephone numbers are not toll-free.)